IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.24473 of 2007

Moinudeen Sheriff .. Petitioner

vs.

1. Mr.Mukram Sheriff
2. Mr.Moazam Sheriff
3. Mr.Munavar Sheriff
4. Mr.Murthaza Sheriff
5. Mr.Mustafa Sheriff

6. The Tamil nadu Wakf Board
   rep. by its Chief Executive Officer
   4/7, 9th Cross Street,
   Indira Nagar, Adayar
   Chennai-20

7. The State of Tamil Nadu
   rep. by its Secretary to Government
   Environment and Sports Department
   Secretariat, Fort St. George
   Chennai-9

8. The State of Tamil nadu
   rep. by its Secretary to Government
   Backward Classes, Most Backward Classes
   and Minorities Welfare Department
   Secretariat, Fort St. George
   Chennai-9 .. Respondents

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This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records comprised in Rc.No.15832/C2/CHE/04, dated 22.6.2007 on the file of the sixth respondent and quash the same and consequently, to forbear the respondents herein from in any manner interfering with the administration of the Moti Baba Dargah situated at No.422, Pantheon Road, Egmore, Chennai-8 by the petitioner herein as a sole Muthavalli.

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For petitioner : Mr.Satish parasaran
For respondents : Mr.K.M.Vijayan
Senior Advocate
for R1 (La-Law)
Mr.R.Achuthan for R2 and R4
Mr.Siraj & Siraj for R6
Mr.V.Manoharan
Government Advocate
for R7 and R8

O R D E R

Heard Mr.Satish parasaran, the learned counsel appearing for the petitioner, Mr.K.M.Vijayan, the learned Senior Advocate appearing for the first respondent, Mr.R.Achuthan, the learned counsel appearing for the second and fourth respondents, Mr.Siraj & Siraj, the learned counsels appearing for the sixth respondent and Mr.V.Manoharan, the learned Government Advocate appearing for the seventh and eighth respondents.

2. It is stated by the petitioner that a saint by name Syed Gulam Dastagir, popularly known as Motibaba, was entombed in a portion of the land bearing door No.422, Pantheon Road, Egmore, Chennai, with an extent of 28 grounds of land. The said saint had died in the year, 1959, and a Durgah has been built over his mortal remains.

3. The Durgah is comprised in the property measuring about 2 grounds and having a compound wall demarcating the portion of the land wherein the petitioner is residing with his family. One Mahaboob Bee had executed a settlement deed in favour of her sons H.A.G.Dastagir Sheriff and A.Mohamed Sheriff with respect to about 28 grounds of land situated at No.422, Pantheon Road, Egmore, Chennai. The first respondent, who is the eldest son of H.A.G.Dastagir Sheriff, is also residing in a portion of the land adjacent to the Durgah.

4. It is further stated that after the demise of the saint, H.A.G.Dastagir Sheriff and A.Mohamed Sheriff had contributed funds jointly for the construction of the Durgah and the annual Urz (Khandoori) festival was jointly conducted by both of them. However, since disputes had arisen between them with respect to the administration of the Durgah, a Civil Suit in O.S.No.4522 of 1983, was filed by H.A.G.Dastagir Sheriff before the City Civil Court, Chennai, seeking for a decree of declaration that he is the sole Muthavalli of the Durgah and for a consequential permanent injunction restraining A.Mohamed Sheriff from interfering with his

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alleged exclusive management of the Durgah, including the conduct of the annual Urz (Khandoori) festival. H.A.G.Dastagir Sheriff had also stated that he is the exclusive Sajadanassin-cum-Kalifa-cum-Muthavalli of the Durgah. As the suit was decreed in favour of H.A.G.Dastagir Sheriff, A.Mohamed Sheriff had preferred an appeal before the VI Additional City Civil Court, Chennai, in A.S.No.313 of 1986. The appellate Court had held that the declaration granted by the trial Court in favour of H.A.G.Dastagir Sheriff was not valid and it was further held that A.Mohamed Sheriff is entitled to joint Muthavalliship of the Durgah, along with H.A.G.Dastagir Sheriff. The said decision was challenged by H.A.G.Dastagir Sheriff before this Court by way of a second appeal in S.A.No.289 of 1988. In the said second appeal, this Court had confirmed the judgment and decree of the first appellate Court holding that the Durgah was administered jointly by H.A.G.Dastagir Sheriff and A.Mohamed Sheriff.

5. It is further stated that H.A.G.Dastagir Sheriff had preferred a Special Leave Petition before the Supreme Court, under Article 136 of the Constitution of India. During the pendency of the Special Leave Petition, H.A.G.Dastagir Sheriff had died, on 4.12.1999. During the pendency of the Special Leave Petition, the legal representatives of the H.A.G.Dastagir Sheriff were impleaded in C.A.No.977 of 1998. It was contended by the impleaded legal representatives that H.A.G.Dastagir Sheriff had executed a deed of Wakf nama, on 30.5.1998, stating that his five sons will be joint Muthavallis of the Durgah and one of them will elect as the Managing Muthavalli of the Durgah. By an order, dated 19.7.2001, the Supreme Court was pleased to dismiss C.A.No.977 of 1998, affirming the judgment of this Court in S.A.No.289 of 1988. Thereafter, A.Mohamed Sheriff had expired on 22.8.2001 and the petitioner had succeeded to the office of the joint Muthavalliship of the Durgah, along with the first respondent herein. Thus, the eldest son of the deceased joint Muthavallis succeeded to the office of the joint Muthavalliship of the Durgah. The sixth respondent herein by its proceedings No.Rc.5024/86/C2/Chen, dated 30.1.2002, had recognised the petitioner and the first respondent as the joint Muthavallis of the Durgah. However, the first respondent had excluded the petitioner from the administration of the Wakf with a deliberate attempt to retain himself as a sole Muthavalli of the Durgah. Thereafter, various proceedings were initiated before the Courts of law with regard to the dispute that arose relating to the administration of the Durgah. While so, the respondents 2 to 4 had filed a representation before the seventh respondent claiming that they also have a right to be recognised as a Muthavalli, along with the petitioner and the respondents 1 and 5 herein. In the said representation, the respondents 2 to 4 have alleged that their rights have been recoginsed by an order of the Wakf Board, dated 23.8.2001.

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6. It has been further stated by the petitioner that the seventh respondent without verifying the records had referred the matter to the sixth respondent. On such reference being made, the sixth respondent had instituted the proceedings in Rc.No.15832/C2/CHE/04, dated 22.6.2007, directing the petitioner to appear before the Board and to place all the relevant records in his possession.

7. It is stated by the petitioner that the Board does not have the jurisdiction or authority to institute the said proceedings, in view of the pendency of the suit in O.S.No.259 of 2004, pending before the Ist Assistant City Civil Court, Chennai, wherein identical reliefs had been sought for by the concerned persons.

8. It has also been stated that since the Government of Tamil Nadu does not have a separate Ministry for Wakf, it did not have the jurisdiction to deal with the representation submitted by the respondents 2 to 4. Recognition of the respondents 2 to 4 as co-Muthavallis along with the petitioner and respondents 1 and 5 does not arise, as the first respondent has been removed as a joint Muthavalli and the wakf board has been a party to all the relevant proceedings. Further, the enquiry purported to be conducted by the sixth respondent would amount to nullifying the earlier orders passed by the Board and also the order passed by this Court and the Supreme Court of India. The Wakf Board had removed the first respondent from being a joint Muthavalli of the Durgah by its order, dated 6.2.2004. The said order had been issued by the Walf Board in view of the serious misconduct alleged against the first respondent. In such circumstances, the petitioner has preferred the present writ petition before this Court, invoking Article 226 of the Constitution of India.

9. The learned counsels appearing for the respondents had refuted the claims made on behalf of the petitioner. Mr.K.M.Vijayan, the learned Senior Advocate appearing for the first respondent had submitted that the sixth respondent Wakf Board has the powers, under Section 32 of the Wakf Act, 1995, to conduct the enquiry with regard to the issues before it pursuant to its notice, dated 22.6.2007.

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10. It has been contended that the petitioner cannot challenge the notice, dated 22.6.2007, issued by the sixth respondent, as it is only a request to the petitioner to appear before the Board on the assigned date with all the relevant records in his possession to decide the issues before the sixth respondent Board. It is premature for the petitioner to challenge the notice at this stage. If any order is passed based on the enquiry or even if the said notice, dated 22.6.2007, impugned in the present writ petition, is

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taken to be an order, it would be open to the petitioner to challenge the same before the Wakf Tribunal, under Section 83(2) of the Wakf Act, 1995. The contention of the petitioner that the issues to be decided by the Wakf Board during the enquiry has already been decided by the various Courts of law cannot be accepted. In fact, the issues before the Wakf Board are relating to different issues which have not been decided so far.

11. Mr.Siraj & Siraj, the learned counsel appearing for the sixth respondent, had submitted that the petitioner and the respondents 1 to 5 had participated in the enquiry before the sixth respondent Board, pursuant to the impugned notice, dated 22.6.2007. On completion of the enquiry, the sixth respondent Board had passed the orders, on 12.12.2007. Therefore, the above writ petition filed by the petitioner has become infructuous.

12. The learned counsel appearing for the petitioner had reiterated his stand that the sixth respondent Board had no jurisdiction to conduct the enquiry with regard to the issues which have been already settled by various Courts of law. Further, he has also contended that the alleged enquiry had not been conducted by following the procedures established by law. Further, the principles of natural justice have not been adhered to during the enquiry. The enquiry has been conducted behind the back of the petitioner, without giving him sufficient opportunity of being heard.

13. The learned counsel appearing for the respondents had submitted that the the petitioner as well as the respondents 1 to 5 had participated in the enquiry conducted by the sixth respondent Wakf Board and the enquiry was conducted in accordance with the procedure established by law and by following the principles of natural justice. It was also submitted that it is open to the petitioner to file an appeal before the Wakf Tribunal, invoking Section 83(2) of the Wakf Act, 1995. It was also submitted that the issues which were the subject matter of the enquiry have not been settled earlier and therefore, it was necessary for the sixth respondent Board to conduct the enquiry to settle the contentious issues in the interest of all the parties concerned.

14. Based on the submissions of the the learned counsels appearing for the parties concerned and on a perusal of the records available, this Court is of the considered view that the petitioner has not shown sufficient cause or reason to interfere with the impugned notice of the sixth respondent, dated 22.6.2007, made in Rc.No.15832/C2/CHE/04 at this stage, since it is submitted that the petitioner and the respondents 1 to 5 had participated in the enquiry conducted by the sixth respondent Board and that the final orders have been passed by the sixth respondent Board, on

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12.12.2007. In such circumstances, the writ petition stands dismissed. However, it is made clear that it is open to the petitioner to challenge the order passed by the sixth respondent Board on 12.12.2007, if so advised, in the manner known to law. No costs. Consequently, connected M.P.Nos.1 and 2 of 2007 are dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chief Executive Officer
   The Tamil nadu Wakf Board
   4/7, 9th Cross Street,
   Indira Nagar, Adayar
   Chennai-20

2. The Secretary to Government
   The State of Tamil Nadu
   Environment and Sports Department
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   Chennai-9

3. The Secretary to Government
   Backward Classes, Most Backward Classes
   and Minorities Welfare Department
   The State of Tamil nadu
   Secretariat, Fort St. George
   Chennai-9

+ 1 cc to the Government Pleader, SR No.76097
+ 1 cc to M/s. Siraj & Siraj, Advocate SR No. 75823
+ 1 cc to M/s. La Law Advocate SR No. 75621

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